LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
MAY 17 1963
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 983

BUCK WILLCOXSON, *Petitioner*,

v.

UNITED STATES OF AMERICA, STEWART UDALL, As Secretary of the Interior, and KERR-McGEE OIL INDUSTRIES, INC., *Respondents*.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

PETITIONER'S REPLY BRIEF

JOHN H. PICKERING
616 Transportation Building
Washington 6, D. C.

JOHN D. ROBB
First National Bank Building
Albuquerque, New Mexico

Counsel for Petitioner

May 17, 1963

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 983

BUCK WILLCOXSON, *Petitioner*,

v.

UNITED STATES OF AMERICA, STEWART UDALL, As Secretary of the Interior, and KERR-McGEE OIL INDUSTRIES, INC., *Respondents*.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

---

PETITIONER'S REPLY BRIEF

The Government's Brief in Opposition, both by what it says and carefully leaves unsaid, emphasizes the two reasons why certiorari is warranted.

1. The Government tacitly admits that the decisions below allow an absurd and indefensible result in the administration of an important land disposal statute (Pet. 17-20).

Thus, the Government does not suggest that the Isolated Tracts Act and its proper administration do not involve

important questions of Federal law. Nor does the Government argue that the result in this case is just—where, because of purely fortuitous administrative delay in the issuance of cash certificates, petitioner loses the benefit of his purchases to subsequent mining claimants, including Kerr-McGee.* Thus, as argued in the Petition, the broad power asserted under the regulation—to call off a sale at any time and for any reason until the issuance of a cash certificate—makes substantial rights depend upon administrative chance or caprice. It also opens the door to preferment and favoritism among competing claimants for public lands. Such a construction of this important land disposal statute is hardly fair or sensible and cannot be justified.

2. The Government acknowledges the conflict between the decisions below and the decisions of this Court by arguing that the Secretary has changed the law.

The Government agrees that the Isolated Tracts Act is part of the cash sale system. That system, which is almost as old as the Nation, is a statutory scheme of land disposal under which, as this Court has repeatedly held, a purchaser acquires equitable title when he has paid the cash price (Pet. 7-17). The Government further agrees that *Wyoming* v. *United States*, 255 U.S. 489 (1921), and the other cases upon which petitioner relies describe "the legal consequences of a cash entry under the system as it existed prior to the adoption of the regulation involved here" (Br. 8-9). Thus, the Government must either admit the conflict asserted by petitioner or argue, as it does, that there is no conflict because the substantive law—the cash sale system and "the legal consequences of a cash entry"

---

* While Kerr-McGee asserts rights in only one of the two tracts involved, the other tract is also covered by mining claims located by others subsequent to petitioner's purchase (R. 118-119) who will hold that tract under their claims if the cancellation of the sale stands.

thereunder—has been changed. The heart of the Government's argument, then, is that the Secretary has power by regulation to change—and has so changed—substantive law, *i.e.*, the cash sale system and the "legal consequences" attendant upon sales under the statutes comprising that system.

The Government's argument that the Secretary may thus change substantive law is plainly wrong and cannot avoid the conflict which exists with the decisions of this Court. As shown in the Petition (p. 16), the Secretary's power is to issue appropriate regulations which "enforce and carry into execution" the public land laws. He may not issue regulations which are "inconsistent with law", *United States* v. *Smull*, 236 U.S. 405, 409 (1915), or which "enlarge or curtail" statutory rights, *Payne* v. *Central Pac. Ry.*, 255 U.S. 228, 236 (1921). Accordingly, if the substantive "legal consequences" of the statutory cash sale system are to be changed, the task is for Congress. In the absence of pertinent Congressional amendment of the statutes comprising the cash sale system, the Secretary may not turn the system inside out by changing the meaning and effect of those statutes as consistently interpreted by this Court.

For the reasons stated in the Petition and this reply, the petition for certiorari should be granted.

Respectfully submitted,

JOHN H. PICKERING
616 Transportation Building
Washington 6, D. C.

JOHN D. ROBB
First National Bank Building
Albuquerque, New Mexico

Counsel for Petitioner